

## **Disparity Study Sub-Committee Meeting Minutes**

*August 14, 2008*

*Present:*

Byron Perkins	Ceil Snow
Isabel Rubio	Suzanne Durham
Alex Alvarez	Fran Godchaux
Frank Adams, Jr.	Lee Loder, Sr.
Cheryl Kidd	Tracey Marrant Adams
L'Tyrce Slade	Harry Giddens
Michael Morrison	Jacquelyn Smith
Betty Helton	Albert Herbert
Heager Hill	Vaneatria McKinnon
Freddie Freeman	

*Absent:*

- Jamika Kirk
- Michael Bell
- Mona Fouad

*Next meeting:* September 4, 2080  
11:30 AM  
Birmingham City Hall - Conference Rooms D&E, 3<sup>rd</sup> Floor

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The meeting was called to order at 12:05 PM as Freddie Freeman, of the Freeman Group, welcomed everyone in attendance.

The Freeman Group has been contracted by the City Council to facilitate the ad hoc Remedy sub-Committee which was formed to implement the recommendations from the Disparity Study.

He noted that the actions of this sub-committee would set the groundwork for business owners in the City of Birmingham.

Introductions were then made.

Freeman noted that the final report of the Disparity Study presented a lot of good recommendations. He also noted that there will be some opposition to the recommendations, so our job as a sub-committee is to stay focused as we put together an overall structure to help move the City and small businesses forward. There will be short-term gains, but the ultimate gains are the processes and procedures that will have a long-term impact.

He reviewed the agenda and explained that the sub-committee would be divided into four (4) work groups. These are:

1. Administrative Actions
2. New Ordinances
3. Enforcement
4. Enforcement Actions
5. Public/Private Sector Initiatives & Intergovernmental Initiatives

Each work group:

- Will elect a chairperson.
- Will meet and work between independently.
- Will report on their progress at the regular sub-committee meetings.

Freeman reviewed the sub-committee expectations. He asked that persons also:

- Keep their council representative informed about the progress of the sub-committee
- Use you community relationships to get input on the process
- Attend the sub-committee and work group meetings.

He stated that he has set a goal of finishing this phase of the disparity study recommendation implementation plan in 90 days. At that time, he would like to present our plan to the City Council.

Dr. Herbert was asked by committee members not familiar with such studies to review the Disparity Studies background information and the legal basis for conducting a Disparity Study.

- The function of a disparity study is to look at the historic patterns for procurement of goods and services and to determine from empirical data if disparities in procurement exist; based on race, gender or natural origin.
- The recommendations, if implemented may be legally challenged, especially by persons / groups who have benefited from such disparities.
- As a part of The Birmingham Plan, the Association of General Contractors agreed to voluntarily Minority participation in construction prime and sub-contracting contracts.
- The Birmingham Construction Industry Authority (BCIA) is an outgrowth on the Birmingham Plan.
- The Disparity Study serves as a non-bias statistical report of historical and current empirical procurement data. These data which supports implementation of the studies recommendations.
- Should one implement the Studies recommendations, the revised procurement policies and procedures may have the effect of taking business from some by providing such opportunities to others.
- The recommendations if implemented must be policies and procedures that the City would be willing to defend legally, should they be challenged in a court of law.

Heager Hill may want to look at what other cities have done.

Herbert noted that the study costs the City of Birmingham \$500,000 and is an outgrowth of work specific to Birmingham.

Members then raised questions about the role of the sub-committee.

After some discussion, the meeting was adjourned. The next meeting is scheduled for September 4<sup>th</sup>, from 11:30 AM until 1:00 PM. Councilman Hoyt is scheduled to attend the meeting. Lunch will be provided.

## **Disparity Study Sub-Committee Meeting Minutes**

*September 4, 2008*

### *Present:*

Subcommittee Members:	Frank Adams, Jr. Betty Helton L'Tyrce Slade	Cheryl Kidd Michael Bell
Guests:	Jacqueline Gray Miller Waymond Jackson	Chaz Mitchell
Staff Support:	Freddie Freeman Gaynelle Adams Jackson	Vaneatria McKinnon

*Next meeting:* September 25, 2080

11:30 AM – 1:00 PM

Birmingham City Hall - Conference Rooms D&E, 3<sup>rd</sup> Floor

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The meeting was called to order at 11:55 AM by Freddie Freeman, of the Freeman Group. He announced that Councilman Steven Hoyt would not be in attendance at today's meeting due to an emergency at work.

Freeman reviewed the minutes from the August 14, 2008 meeting and thanked Dr. Herbert for his background information on the Disparity Study.

Michael Bell asked to review the role / purpose of the subcommittee. Freeman defined his role being to work with the subcommittee to ultimately put a formal process in place to implement the Disparity Study Recommendations. He noted that Councilman Hoyt will clarify the roles and expectations of the subcommittee at our next meeting.

Vaneatria McKinnon, Councilman Hoyt's Executive Council Assistant, listed the following subcommittee roles:

- Develop a plan of implementation for the recommendations
- Prioritize the recommendations
- Make a recommendation to the Administration to implement the plan

She also stated that the subcommittee should:

- Set goals for each work team
- Develop a time table for completing their assigned tasks
- Establish leadership for the sub-committee and a team leader for each work team
- Have legal representation on each work team

Frank Adams, Jr. questioned if we have the authority to ask the Mayor and the City Council staff to provide the information we need to facilitate developing an implementation plan. He also felt that subcommittee members may not have been prepared for the long-term time requirement needed to develop the plan.

Gaynelle Jackson noted that there seemed to be a disconnect between Councilman Hoyt's expectations and those of the subcommittee.

Ms. McKinnon stated, we also need to understand that according to the Mayor - Council Act , we have to have direct authorization from the Mayor or his Chief of Staff to engage members of his staff. We, the sub-committee or even Councilors have no authority to direct any of the Administration staff to perform a work product. Whenever necessary, a request should be generated from the Councilor's office or the Council Administrator in that regard.

Cheryl Kidd raised the question about the feasibility of the recommendations. She thought that the subcommittee should only have oversight to insure the implementation on the recommendations. She also noted that each work team should be called upon not to second guess the recommendations that have been formally presented but to embrace them, prioritize them into a plan and to utilize their sphere of influence to ensure that the process continues to have forward momentum.

Adams asked if we were to develop a plan that included financial resources.

Ms. Kidd stated that the totality of the feasibility and peripheral surrounding the implementation of the recommendation should be inherent in the document itself. The group of individuals that performed this study had unlimited access to the Administration staff and all files and documentation relative to the work they were engaged to perform. We don't have to reinvent the wheel and re-do what has already been done by very capable individuals. Again, the role of the committee should be one of oversight and motivation to ensure that the process does not stall and the implementation is not impeded unnecessarily.

Freeman noted that someone in the City has to be held accountable for developing an implementation plan. This directive would have to come from the Mayor.

Freeman also noted that we would need buy-in from both the Administration and the Council. Cheryl Kidd agreed that the Council must adopt and be fully on-board with the implementation plan.

Mrs. McKinnon reiterated the premise that the work of the committee is of great importance across every genre of our citizenry. We all benefit from having a definitive plan for how we deal with the economic disparity that exists in this city. We have to proceed with this process under the assumption that we have the support of the Administration or be prepared to make the case to the Administration to obtain that support; keeping in mind that since this process began, there have been three different people in authority with three totally different modes of operation. We also note that any action or recommendation implemented with regard to the work of the committee will be challenged litigiously. There is a court order with regard to this process that precipitated the undertaking of the original study

There was some discussion about developing a community based awareness plan. The subcommittee could use their influence to solicit community backing for the implementation of the recommendations.

There also need to be a communication plan that includes:

- Talking points – where we are, how we got there, where we hope to go
- Realistic expectations
- Identifying a spokesperson for the group

Freeman noted that the recommendations are only part of the solution. The City needs to institute a formal supplier diversity program with a supplier diversity manager responsible for implementing programs and procedures related to the recommendations.

A question was raised on where the Council was on the recommendations. Freeman stated that the Council voted in April 2008 to accept the findings from the Disparity Study.

After some discussion, the group agreed on the following "next steps":

1. Educate the subcommittee about the Disparity Study
  - a. Send the Disparity Study Executive Summary to subcommittee members
  - b. Present the City Council's expectations of the subcommittee
2. Clarify the roles and expectations of the sub-committee members
3. Ensure that the subcommittee members are committed to the process
4. Develop a communication plan

Our ultimate goal would be to make a presentation on the implementation plan to the Administration.

Mr. Freeman thanked the attendees for their participation in the discussion. The dialogue has done a lot to set the parameters around our direction going forward.

With there being no further business at this time, the meeting was adjourned. The next meeting is scheduled for September 25<sup>th</sup>, from 11:30 AM until 1:00 PM.

## Disparity Study Sub-Committee Meeting Minutes

October 16, 2008

### Present:

Subcommittee Members:	Byron Perkins	Ceil Snow
	Isabel Rubio	Fran Godchaux
	Frank Adams, Jr.	Lee Loder, Sr.
	Cheryl Kidd	Tracey Marrant Adams
	L'Tyrce Slade	Michael Morrison
	Heager Hill	Michael Bell
	Jamika Kirk	

Guests:	Councilman Steven Hoyt	Richard Arrington, Jr.
	Jacqueline Gray Miller	Chaz Mitchell
	Waymond Jackson	Jose Perry, Jr.

Staff Support:	Vaneatria McKinnon	Freddie Freeman
	Gaynelle Adams Jackson	

Next meeting: November 6, 2008

11:30 AM

Birmingham City Hall - Conference Rooms D&E, 3<sup>rd</sup> Floor

*was this held?*

The meeting was called to order as Freddie Freeman, of the Freeman Group. He reviewed the agenda which included presentations by Councilman Steven Hoyt, Richard Arrington, Jr. and Michael Bell.

**Councilman Hoyt** thanked persons for participating on the Disparity Study Subcommittee. He noted that the subcommittee's charge was to take the eleven recommendations from the Disparity Study and bring remedy as to how to get people involved in the process before it comes to City Hall.

He stressed that the subcommittee needed to be more proactive and take charge. The subcommittee needs to develop a schedule (Councilman Hoyt sees completion in 4 months) and get things moving.

Freddie Freeman said that his responsibility is to facilitate the group, but that the charge is in the hands of the subcommittee.

Councilman Hoyt suggested that we have the Mayor's Chief of Staff in attendance at our next meeting.

Michael Bell asked Councilman Hoyt to clarify the goals of the subcommittee. His response was:

- Prioritize the recommendations
- Develop an implementation plan and schedule
- Make recommendations to the City Council

- Determine which of the eleven recommendations will be recommended to the City Council in the form of an ordinance.
  - Currently there is no mandate for the City to do business with minority vendors.
- Coordinate with the Mayor's staff to get the recommendations implemented.
  - Use your sphere of influence to keep the recommendations before the eyes of the public.
  - Make update to the Council
  - Develop a media plan with talking points

Lee Loder, Sr. asked if the Mayor was on board with the process. Councilman Hoyt noted that it is the legislative body's responsibility to make ordinances.

Frank Adams, Jr. suggested that the subcommittee make a presentation to both the Council and the Mayor.

There was some discussion about possible lawsuits, Byron Perkins noted that the more entities that sign off on the plan, the more limited our lawsuits may be.

**Dr. Richard Arrington, Jr.** then discussed the historical significance of the Disparity Study. He stated that the City had been working to enhance participation of minorities, women and developing businesses, especially in City contracts. We had passed ordinances and set a 10% goal.

The Association of General Contractors (AGC) took the City to court. The City lost the case in state court because of the state bid laws.

Dr. Arrington convened a meeting of the AGC and business leaders. The outgrowth of this gathering was the Birmingham Plan. They also worked out an agreement with local banks to loan monies to local businesses.

Mayor Kincaid's goal for the Disparity Study was to establish a clear record to show that there was discrimination that was strong enough to get a set-a-side.

Dr. Arrington had been in discussions with Dan Muse, the Attorney that worked on the Disparity Study. He asked him where we needed to start. We need to answer the following questions:

1. Are we collecting the kind of data?
2. Do we have a list of minority firms?
3. Do we contact them regularly?

Fran Godchaux stated that we wanted to take what had been done in Denver and utilize their findings to establish a broad based Disparity Study.

Dr. Arrington suggested that we ask these questions first:

1. Who administers our Minority Business Enterprise (MBE) program?
2. Who keeps records
3. Who makes contracts?

Freddie Freeman noted that the City needs a formal Supplier Diversity Program. It was suggested that the subcommittee needed copies of the existing MBE ordinances.

The subcommittee identified the following concerns:

- No process to register professional services companies with the City
- No process to identify the ethnicity of minority businesses
- The responsibility should be in the Contract Compliance Office

Michael Bell discussed the contractor's perspective. He stated the Consent Decree stated that no records will be kept in City Hall. BCIA was charged with keeping construction data. No one was charged with keeping information on professional services.

He noted that any program needs the following components:

- Compliance & informant
- Accounting
- Outreach
- Data maintenance
- Buy-in from stakeholders
- Real opportunities

He suggested that we look at examples of what has been successful.

He also noted that BCIA is one of two components of the Birmingham Plan that is still in place today. The other program is the Birmingham Business Resource Center (BBRC).

BCIA:

- Certifies minority and women-owned contractors
- Monitors contracts
- Identifies opportunities for contractors that are "ready"

Construction in Birmingham is a very close knit community. BCIA strives to level the playing field with opportunities and training & education. They are also able to set goals for many corporations in the City.

Challenges are bonding – access to bonding is influenced by one's credit record.

Freddie Freeman reviewed the next steps:

- Revisit the work teams
- Start talking about who we need to talk to in the City to work with the work teams.

With no further business, the meeting was adjourned. The next meeting is scheduled for November 6th, from 11:30 AM until 1:00 PM.

## Disparity Study Committee Final Report

- In 2008, a subcommittee was formed to fashion an implementation plan concerning the findings of the Disparity Study. The committee consisted of the following community representatives:

Byron Perkins (Chairman) —	Ceil Snow —
Isabel Rubio —	Suzanne Durham —
Alex Alvarez	Fran Godchaux —
Mona Fouad	Frank Adams, Jr. (Co-Chairman) —
Lee Loder, Sr.	Cheryl Kidd —
Jamika Kirk —	Tracy Morant- Adams —
L'Tyrce Slade —	Harry Giddens
Michael Morrison	Jackie Smith
Betty Helton	Albert Herbert
Michael Bell —	Heager Hill

- The committee met multiple times to review and gain a full understanding of the Disparity Study and the report recommendations (see attachment).
- Timeline of Events:
  - Committee Meeting – August 14, 2008
  - Committee Meeting – September 4, 2008
  - Committee Meeting – October 16, 2008
  - Planning Committee Meeting – January 8, 2009
  - Committee Update Letter – February 25, 2009
  - Mayor's Office Letter – April 8, 2009
  - Economic Development Committee Presentation – May 14, 2009
  - Committee Of the Whole Presentation – May 21, 2009

The biggest obstacle that the committee encountered was lack of access to City Staff. Multiple times, requests to meet with necessary staff employees was met with no response.

In conclusion, the committee agreed with all of the recommendations.

Also, I recommend that a Supplier Diversity Manager's position be created to coordinate implementation of the recommendation's and to provide oversight of a formal DBE program for the City of Birmingham.

**Process for Implementing City of Birmingham  
Disparity Study Recommendations  
for Improving M/WBE Contracting**

Recommendations

**1. Administrative Actions**

- 9.1 Disp  
Report  
9/28/07
- Develop a verifiable system for outreach to disadvantaged business enterprises to solicit general contracting and subcontracting bids. *Administration Action 1*
  - Develop a verifiable system of tracking the utilization rates of disadvantaged business enterprises on City of Birmingham procurements. Assign female, minority and NACIS codes to all vendors, contractors and subcontractors. *Administration Action 2*
  - Establish and maintain a formal system of certification, compiling, utilizing and updating of disadvantaged enterprise directories and organizations through both the Mayor's Office of Contract Compliance and the Mayor's Office of Economic Development to facilitate checks and balances and enhance accountability for maintenance and accuracy. *Administration Action 3*
  - Develop a systematic methodology for the compilation and merging of bid lists. *Administration Action 4*
  - Promulgate written guidelines for contract administration to augment the general guidance set forth in the Internal Audit Procedural Manual. *Administration Action 5*
  - 9.4 ▪ Develop a centralized process for awarding informal bids to ensure the fair administration and distribution of informal bids. *Administration Action 6*
  - 9.14 ▪ Establish a process to ensure the fair administration and distribution of non-bid Public Works contracts less than \$50,000.00. *Administration Action 7*

**2. New Ordinances**

- 9.2, 9.4
- Promulgate a Prompt-Payment ordinance to assure that subcontractors are paid in a timely manner. *New Ordinance 1*
  - 9.3 ▪ Create a Department of Internal Audit and Contract Compliance and substantially augment the staff to allow for effective contract administration, oversight and auditing of the full range of duties and responsibilities for that agency. *New Ordinance 2*
  - 9.7 ▪ Create a race and gender based program to augment the existing partly effective race and gender neutral programs. *New Ordinance 3*

- 9.8
- Provide full staffing of the Birmingham Construction Industry Authority (BCIA) or its equivalent to promote centralized certification in metro area as well as efficient performance of its well-defined tasks including:
    - Bid Preparation
    - Estimating (Cost and Quantity Surveys)
    - Finance & Contract law orientation and advice review and advice regarding job site performance
    - Marketing and Membership
    - Resolving and Preventing Construction Disputes
    - Business Planning
    - Bonding and insurance assistance

*New Ordinance 4*

### 3. Enforcement Actions

- 9.14
- Conduct a periodic audit of the emergency procedure provisions to ensure that bid awards less than \$50,000.00 are being administered consistent with the legal intent. (3-3-8 of the General Code) *Enforcement 1*
  - Require each bidder to provide a listing of each disadvantaged business enterprise to be utilized on the project. (4-1-52: Code of Ordinances) *Enforcement 2*
- 9.15
- Provide annual reports to the Office of the Mayor and City Council on utilization of disadvantaged businesses. (Section 3-3-16 of the Birmingham Municipal code) *Enforcement 3*
- 9.5
- Consistently utilize the conference of intended bidders process for bids in excess of \$100,000.00. (3-3-16 (f) of the Birmingham Municipal Code) *Enforcement 4*

### 4. Public/Private Sector Initiatives

- 9.10
- Engage the banking and finance community in ways to better assist DBE businesses in their efforts to gain easier access to capital. *Public/Private Sector Initiative 1*
- 9.13
- Revitalize and expand the goals of the Minority Business Opportunity Initiative to promote enterprise and business development for DBE companies. *Public/Private Sector Initiative 2*

### 5. Intergovernmental Initiatives

- 9.11
- Share Disparity Study findings with other governmental entities to advise and inform. *Intergovernmental Initiative 1*
- 9.12
- Encourage the Jefferson County and other metropolitan school districts to make greater use of the Ace Mentorship Program. *Intergovernmental Initiative 2*
- 9.14
- Encourage the state of Alabama to invigorate Lawson State Community College with skilled trade and more technical education programs. *Intergovernmental Initiative 3*

June 12, 2009

**MEMORANDUM**

TO: Ms. Paula Smith, City Clerk

FROM: Larry P. Langford, Mayor

RE: **Disapproval of Resolution No. 878-09**

By this message, and pursuant to Section 3.15 of the Mayor-Council Act of 1955, as amended, I hereby veto Birmingham City Council Resolution No. 878-09 and choose not to exercise the Council's authorization to implement the results of the Disparity Study referenced in said resolution.

I am bound by the oath of my office and the responsibilities vested in the chief executive and administrative officer of the City to veto Resolution No. 878-09 which was adopted by the City Council on June 9, 2009. My reasons for issuing this veto are as follows:

**1. The resolution is vague and ambiguous because it is unclear what Disparity Study results I am being asked to implement:**

The City Council on April 29, 2008 approved an appointment letter authorizing payment of \$20,000 to Freddie Freeman to develop a disparity study implementation plan. Although the City paid Freeman a substantial sum of money last year for his work, it has yet to receive a copy of his study, despite my staff's repeated requests. No study or work product was included in last week's Council packets before the vote on **Resolution No. 878-09**, and no results or recommendations of the study were identified or discussed when the Council took its vote. In fact, investigation by my staff has revealed that members of the Disparity Task Force do not have copies of "final report" performed by Freeman and cannot identify any specific recommendations made by

Freeman on behalf of the committee. Additionally, committee members said they did not vote nor do they agree with recommendations included in a report submitted by Freeman. If I do not know what I am being asked to implement, I cannot in good conscience implement it.

## **2. Conclusion.**

My objection to signing *Resolution No. 878-09* has merit and serves the interest of the City. I am concerned that the Council may have voted to implement something that does not exist and/or which has not been fully vetted. It is further my concern that the City may have paid for services it did not actually receive. Accordingly, I have directed staff to initiate an audit of Freeman's appointment in accordance with standard Internal Audit and Contract Compliance division procedures.

Disparity issues are delicate issues which implicate federal anti-discrimination laws and regulatory prerequisites for the receipt of federal funds. The City must be cautious about implementing any plan which may touch upon these areas, or risk violating anti-discrimination laws or federal Disadvantaged Business Enterprise regulations. As a result, it is crucial for executive staff to be extremely well-informed about the precise disparity study recommendations they are being asked to implement, and whether any, some or all of those recommendations are, indeed, "enforceable." In this case, the critical information has not been shared with my office or with City administrative staff in order to make that determination.

To that end, I would implore the Council to uphold my veto of *Resolution No. 878-09*.

cc: Birmingham City Councilors  
Deborah Vance, Chief of Staff  
Chris Hartsell, Chief of Operations  
Lawrence Cooper, City Attorney